

1 Lawrence J. Teker
2 **TEKER TORRES & TEKER, P.C.**
3 Suite 2-A, 130 Aspinall Avenue
4 Hagatna 96910-5018, Guam
5 Telephone: (671) 477-9891
6 Facsimile: (671) 472-2601

7 John E.D. Powell, WSBA #12941
8 **STAFFORD FREY COOPER**
9 601 Union Street, Suite 3100
10 Seattle WA 98101
11 Telephone: (206) 623-9900
12 Facsimile: (206) 748-9018

13 Attorneys for Defendant Defendants, **Marwan Shipping**
14 **& Trading, Co. and Five Seas Shipping**
15 **Co., LLC**

FILED
DISTRICT COURT OF GUAM
OCT - 4 2006
MARY L.M. MORAN
CLERK OF COURT

16 IN THE DISTRICT COURT OF GUAM

17 UNITED STATES OF AMERICA,	CASE NO. 06-00011
18 Plaintiff,	AMENDED ANSWER AND
19 vs.	COUNTERCLAIM TO VERIFIED
20 MARWAN SHIPPING & TRADING, CO.,	COMPLAINT OF THE UNITED
21 FIVE SEAS SHIPPING CO., LLC, AND S.J.	STATES OF AMERICA;
22 GARGRAVE SYNDICATE 2724, in	AMENDED ANSWER TO
23 personam,	CROSS-CLAIM OF S.J.
Defendants.	GARGRAVE SYNDICATE 2724
AND CROSS-CLAIMS, COUNTERCLAIM,	
AND CLAIM IN INTERVENTION.	

24 **ANSWER TO VERIFIED COMPLAINT**

25 Marwan Shipping & Trading Company, LLC, Sharjah and Five Seas Shipping
26 Company, LLC, Sharjah answer the Verified Complaint of the United States as follows:

27 1. These answering defendants admit that this is a case of admiralty and
28 maritime jurisdiction and that S.J. Gargrave Syndicate 2724 is a defendant. There is no

29 AMENDED ANSWER AND COUNTERCLAIM TO
30 VERIFIED COMPLAINT OF THE UNITED STATES OF
31 AMERICA; AMENDED ANSWER AND COUNTERCLAIM
32 TO CROSS-CLAIM OF S.J. GARGRAVE SYNDICATE
33 2724 AND COUNTERCLAIM

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Seattle WA 98101.1374

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ORIGINAL

1 entity Marwan Shipping and Trading Co. There is no entity Five Seas Shipping Co.,
2 LLC. The proper name for each entity is Marwan Shipping and Trading Company, LLC,
3 Sharjah (hereinafter "Marwan") and Five Seas Shipping Company, LLC, Sharjah
4 (hereinafter "Five Seas"). Except as so admitted, the allegations of paragraph 1 are
5 denied.

6 2. These answering defendants are without information sufficient to form a
7 belief as to the truth of the allegations contained in paragraph 2 and therefore deny
8 same.

9 3. Admitted.

10 4. These answering defendants are without information sufficient to form a
11 belief as to the truth of the allegations contained in paragraph 4 and therefore deny
12 same.

13 5. Defendant Marwan, has a place of business in the UAE. Except as so
14 admitted, the allegations of paragraph 5 are denied.

15 6. Marwan Shipping and Trading Company, LLC, Ajman Free Zone, a
16 defunct company, was the owner of the M/V AJMAN 2. Except as so admitted the
17 allegations of paragraph 6 are denied.

18 7. Denied.

19 8. Denied.

20 9. Denied.

21 10. Denied.

22 11. Defendant Five Seas has a place of business in the UAE. Except as so
23 admitted, the allegations in paragraph 11 are denied.

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1 12. Denied.

2 13. Denied.

3 14. Defendant Five Seas admits it was the manager of the M/V AJMAN 2.

4 15. Denied.

5 16. Denied.

6 17. Denied.

7 18. These answering defendants are without information sufficient to form a

8 belief as to the truth of the allegations contained in paragraph 18 and therefore deny

9 same.

10 19. These answering defendants are without or information sufficient to form a

11 belief as to the truth of the allegations contained in paragraph 19 and therefore deny

12 same.

13 20. Denied.

14 21. These answering defendants admit the M/V AJMAN 2 grounded at Family

15 Beach. Except as so admitted, the allegations in paragraph 21 are denied.

16 22. Denied.

17 23. Denied.

18 24. Denied.

19 25. Paragraph 25 does not require an answer.

20 26. Denied.

21 27. Denied.

22 28. Paragraph 28 does not require an answer.

23 29. Denied.

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1 30. Denied.

2 31. Denied

3 32. Paragraph 32 does not require an answer.

4 **AFFIRMATIVE DEFENSES TO VERIFIED COMPLAINT**

5 1. Failure to state facts sufficient to constitute a cause of action against these
6 answering defendants.

7 2. These answering defendants are informed and believe that if the Plaintiff
8 sustained any injuries and damages, they proximately resulted from the conduct of
9 others.

10 3. The claims set forth in the verified complaint are time barred.

11 4. Plaintiff, by its conduct and/or the conduct of its agents, servants,
12 representatives, or employees, has waived and/or is estopped and barred from any
13 rights of recovery against these answering defendants.

14 5. Plaintiff is barred from any relief against these answering defendants by
15 reason of unclean hands.

16 6. Plaintiff and/or other parties not related to this defendant were careless
17 and negligent in and about the matters referred to in the complaint, or were
18 otherwise responsible and legally liable for the allegations contained in said
19 pleading, which negligence, carelessness, and/or legal liability proximately
20 contributed to and/or were the sole proximate cause of the damages or injuries
21 complained of, if any there be. Such negligence, carelessness, and/or liability bar
22 and/or proportionately reduce any recovery against these answering defendants.

1 7. Plaintiff has failed to mitigate and minimize its damages, if any there be,
2 and said failure eliminates or reduces any claim for relief by plaintiff against these
3 answering defendants.

4 8. In the event it is held liable, these answering defendants allege that their
5 liability is secondary to other parties in this action and on that basis alleges that any
6 award to which the plaintiff is entitled must first be satisfied by said other parties.

7 9. The AJMAN 2 was a vessel in distress at the time it sought refuge in
8 Guam.

9 10. Pursuant to 46 U.S.C. § 181 *et seq.* these answering defendants liability, if
10 any, is limited to the value of each defendant's interest, if any, in the AJMAN 2.

11 11. These answering defendants hereby incorporate all defenses raised or
12 that could be raised by other parties to this action as if asserted here in full.

13 12. These answering defendants reserve the right to supplement and add to
14 these affirmative defenses as appropriate.

15 **COUNTER-CLAIM TO VERIFIED COMPLAINT**

16 1. Jurisdiction: This Court has Jurisdiction pursuant to 28 USC § 1333 as
17 this is a case of admiralty and maritime jurisdiction and within Rule 9(h) of the Federal
18 Rules of Civil Procedure; and pursuant to 28 USC §§1345, 1331; 46 USC § 747 *et seq.*
19 and 46 USC § 781 *et seq.*

20 2. Parties: Defendant counter-claimant and cross-claimant Marwan has
21 a place of business in the United Arab Emirates, and was the general agent, with no
22 commercial responsibility for the M/V AJMAN 2.

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1 3. Defendant, counter-claimant and cross-claimant Five Seas has a place of
2 business in the United Arab Emirates, and was the manager of the M/V AJMAN 2.

3 4. The United States is the plaintiff herein, which, through the U.S. Coast
4 Guard, controls the Port of Apra, Guam.

5 **FIRST CAUSE OF ACTION**
6 **(Negligence Against the United States)**

7 5. The United States, through its agents the U.S. Coast Guard and others,
8 was negligent in the manner in which it supervised the M/V AJMAN 2 after the U.S.
9 Coast Guard allowed the M/V AJMAN 2 to enter the Port of Apra, Guam.

10 6. The United States, through its agents the U.S. Coast Guard and others,
11 was negligent in ordering the M/V AJMAN 2 to leave its berth during the typhoon and
12 further ordering the vessel to anchor in the harbor during the typhoon.

13 7. The United States, through its agents and others, was negligent in the
14 hiring, supervision and control of the salvage contractors and its subcontractors.

15 8. Such negligence was a direct and superseding cause of the damages
16 which the United States has alleged.

17 9. As a direct and proximate result of such negligence by the United States,
18 these answering and counterclaiming defendants have suffered damages in an amount
19 to be proven at trial. These answering and counterclaiming defendants are entitled to
20 recover from the United States for its negligent acts and/or omissions, and those of its
21 agents.

22 ///

23 ///

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Seattle WA 98101.1374

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1 **SECOND CAUSE OF ACTION**
2 **(Violation of the International Law of the Sea)**

3 10. The M/V AJMAN 2 was a vessel in distress at the time it sought refuge in
4 the Port of Apra, Guam.

5 11. The United States, through its agent the U.S. Coast Guard, wrongfully
6 delayed the M/V AJMAN 2's entrance into the Port of Apra, Guam and thereby violated
7 the customary and applicable international law of the sea.

8 12. As a direct and proximate result of this wrongful conduct by the United
9 States these answering and counterclaiming defendants have suffered damages in an
10 amount to be proven at trial.

11 **THIRD CAUSE OF ACTION**
12 **(Conversion of Property)**

13 13. Upon information and belief, the United States, through its agents, had the
14 bunkers pumped from the AJMAN 2 as part of its "salvage" operation.

15 14. Upon information and belief, the United States and/or its agents has
16 possession of those bunkers or has sold those bunkers.

17 15. Marwan and Five Seas paid for these bunkers and the United States owe
18 Marwan and/or Five Seas the value of these bunkers plus other attending damages,
19 which amount will be proven at trial.

20 **ANSWER TO CROSS CLAIM OF S.J. GARGRAVE SYNDICATE 2724**

21 1. These answering defendants admit that the court has jurisdiction over this
22 case. Except as so admitted, the allegations of paragraph 1 of the cross-claim are
23 denied.

1 2. These answering defendants are without information sufficient to form a
2 belief as to the truth of the allegations contained in paragraph 2 and therefore deny
3 same.

4 3. Marwan has a place of business in the UAE. Except as so admitted, the
5 allegations of paragraph 3 are denied.

6 4. Five Seas has a place of business in the UAE. Except as so admitted the
7 allegations of paragraph 4 are denied.

8 5. Admitted.

9 6. Admitted.

10 7. Denied.

11 8. Denied.

12 9. Denied.

13 10. Five Seas applied for a COFR with EPG, LLC the designated guarantor.
14 S.J. Gargrave Syndicate 2724 issued the COFR to the M/V AJMAN 2 and her owner
15 and operators and S.J. Gargrave Syndicate 2724 charged and collected a premium for
16 the insurance. Accept as so admitted and clarified, the allegations of paragraph 10 are
17 denied.

18 11. Denied.

19 12. Denied.

20 13. Five Seas applied for a COFR with EPG, LLC the designated guarantor.
21 S.J. Gargrave Syndicate 2724 issued the COFR to the M/V AJMAN 2 and her owner
22 and operators and S.J. Gargrave Syndicate 2724 charged and collected a premium for
23

1 the insurance. Accept as so admitted and clarified, the allegations of paragraph 13 are
2 denied.

3 14. Denied.

4 15. Denied.

5 16. Five Seas applied for a COFR with EPG, LLC the designated guarantor.
6 S.J. Gargrave Syndicate 2724 issued the COFR to the M/V AJMAN 2 and her owner
7 and operators and S.J. Gargrave Syndicate 2724 charged and collected a premium for
8 the insurance. Accept as so admitted and clarified, the allegations of paragraph 16 are
9 denied.

10 17. Denied.

11 18. Denied.

12 19. Denied.

13 20. Denied.

14 21. Denied.

15 22. Denied.

16 23. An actual controversy does exist between S.J. Gargrave Syndicate 2724,
17 on the one hand and Marwan and Five Seas, on the other. Except as so admitted, the
18 allegations of paragraph 23 are denied.

19 24. No answer to paragraph 24-27 is required from these answering
20 defendants.

21 **AFFIRMATIVE DEFENSES TO CROSS-CLAIMS**

22 1. Failure to state facts sufficient to constitute a cause of action against these
23 answering defendants.

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PROFESSIONAL CORPORATION
601 Union Street, Suite 3100
Seattle WA 98101.1374

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1 2. These answering defendants are informed and believe that if S.J.
2 Gargrave Syndicate 2724 sustained any injuries and damages, they proximately
3 resulted from the conduct of others.

4 3. The claims set forth in the cross-claims are time barred.

5 4. S.J. Gargrave Syndicate 2724, by its conduct and/or the conduct of its
6 agents, servants, representatives, or employees, has waived and/or is estopped and
7 barred from any rights of recovery against these answering defendants.

8 5. S.J. Gargrave Syndicate 2724 is barred from any relief against these
9 answering defendants by reason of unclean hands.

10 6. S.J. Gargrave Syndicate 2724 and/or other parties not related to this
11 defendant were careless and negligent in and about the matters referred to in the cross-
12 claims, or were otherwise responsible and legally liable for the allegations contained in
13 said pleading, which negligence, carelessness, and/or legal liability proximately
14 contributed to and/or were the sole proximate cause of the damages or injuries
15 complained of, if any there be. Such negligence, carelessness, and/or liability bar
16 and/or proportionately reduce any recovery against these answering defendants.

17 7. S.J. Gargrave Syndicate 2724 has failed to mitigate and minimize its
18 damages, if any there be, and said failure eliminates or reduces any claim for relief by
19 S.J. Gargrave Syndicate 2724 against these answering defendants.

20 8. S.J. Gargrave Syndicate 2724 is the pollution insurer for these answering
21 defendants as well as the guarantor on the COFR which Gargrave issued. Gargrave
22 has ignored its fiduciary obligations to its insured and has placed its interests above
23

1 those of its insured - - these answering defendants. Gargrave is acting in bad faith and
2 is in breach of contract.

3 9. Pursuant to 46 U.S.C. § 181 *et seq.* these answering defendants liability, if
4 any, is limited to the value of each defendant's interest, if any, in the AJMAN 2.

5 10. These answering defendants hereby incorporate all defenses raised or
6 that could be raised by other parties to this action as if asserted here in full.

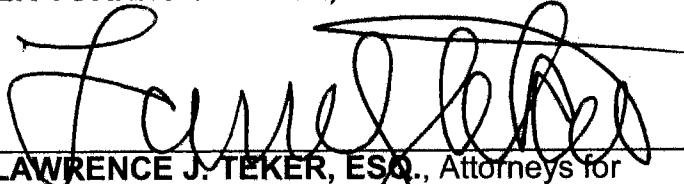
7 11. These answering defendants reserve the right to supplement and add to
8 these affirmative defenses as appropriate.

9 DATED this 3 day of October, 2006.

10 **STAFFORD FREY COOPER**

11 **TEKER TORRES & TEKER, P.C.**

12
13 By


14 **LAWRENCE J. TEKER, ESQ., Attorneys for**
15 **Defendants, *Marwan and Five Seas***

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AMENDED ANSWER AND COUNTERCLAIM TO
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STAFFORD FREY COOPER

PROFESSIONAL CORPORATION

601 Union Street, Suite 3100

Seattle WA 98101.1374

TEL 206.623.9900 FAX 206.624.6885

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